

**38 CFR Part 3****RIN 2900-AR13****Certification of Evidence for Proof of Service****AGENCY:** Department of Veterans Affairs.**ACTION:** Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning the nature of evidence that VA will accept as proof of military service and character of discharge. In the past, VA only accepted original service documents, copies of service documents issued by the service department or by a public custodian of records, or photocopies of service documents if they were certified to be true copies of documents acceptable to VA by an accredited agent, attorney or service organization representative who had successfully completed VA-prescribed training on military records. This proposed change would allow VA to accept uncertified copies of service documents as evidence of military service if VA is satisfied that the documents are free from alteration. The intended effect of this amendment is to streamline and improve the timeliness of adjudication and claims processing for VA benefits—without compromising program integrity.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments may be submitted through www.Regulations.gov or mailed to: Pension and Fiduciary Service (21PF), Department of Veterans

Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Comments should indicate that they are submitted in response to RIN 2900-AR13–Certification of Evidence for Proof of Service. Comments received will be available at www.Regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: David Klusman, Lead Program Analyst, Pension and Fiduciary Service (21PF), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 632-8863. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The cornerstone of eligibility for VA benefits is active military, naval, or air service and a discharge or release under conditions other than dishonorable. VA regulations at 38 CFR 3.203 establish the nature of the evidence VA will accept as proof of active military service and character of discharge. In general, those regulations require original service documents; VA will accept copies of those documents only if the copies are issued by the military service department or by a public custodian of records or photocopies if they are certified to be true copies of documents acceptable to VA by an accredited agent, attorney or service organization representative who has successfully completed VA-prescribed training on military records.

On November 3, 1980, VA amended 38 CFR 3.203 as a consequence of the Department of Defense's revision to its DD Form 214, (Certificate of Release or Discharge from Active Duty). 45 FR 72654 (Nov. 3, 1980). Under the revised version of § 3.203, VA would only accept a copy of a DD Form 214 or Certificate of Discharge if the copy was issued by the service department. VA's revisions

precluded acceptance of a document certified by a notary public or a public record custodian without verification by the service department.

However, in June 1981, VA proposed to further amend § 3.203 to again accept a copy of a discharge document certified as a true and exact copy by a public custodian of records. 46 FR 32036 (Jun. 19, 1981). VA explained that “[i]t now appears that failure to use certified copies of discharge documents is causing lengthy delays in claims processing because verification of service must be obtained from the service departments in many more cases than we originally believed.” 46 FR 32036. VA noted that, “[s]ince the process of obtaining verification is lengthy, the volume of requests is rapidly increasing. Consequently, we are proposing to amend § 3.203 so as to again accept a certified copy of a DD Form 214 or the Certificate of Discharge issued by a public custodian of records.” *Id.* VA published a final rule adopting these proposed changes in October 1981. 46 FR 51246 (Oct. 19, 1981).

In June 2000, VA proposed further revision to § 3.203 to allow VA to accept photocopies of service documents as proof of service if an accredited agent, attorney, or service organization representative who had successfully completed VA-prescribed training on military records certified them to be true copies of documents acceptable to VA. VA explained that the proposed amendment would “help streamline claims processing because it will reduce the number of instances where VA must seek verification of military service from the service department.” 65 FR 39580. VA published a final rule adopting these changes in April 2001. 66 FR 19857 (Apr. 18, 2001).

Under the current process, when the Veterans Benefits Administration (VBA) receives uncertified service documents (i.e., not originals or certified copies), it must seek to verify service through other means, such as data sharing

with other Federal agencies. Although VA is engaged in these efforts, the available tools to rapidly request verification of service only apply to service that ended after 1994. Thus, particularly for pension and survivor benefits claims—where the population skews towards a service period prior to 1994—VA cannot utilize the more rapid service verification methods noted above, as the majority of those claimants served in (or are beneficiaries of those who served in) periods that pre-date 1994.

VA's inability to use the more rapid service verification methods in these cases often adds months to the claims process, and yet the responses received from the other Federal agencies almost always affirm the information that was already available on the uncertified service document. And in instances where the records cannot be located—such as those destroyed in the 1973 fire at the National Personnel Records Center—VA must conduct additional review and request additional service information from the claimants, which adds more time to the claims process. Lastly, specific to pension benefit claims, service verification is often the only additional piece of information needed for final adjudication—turning a claim that should be completed in one touch into a claim requiring multiple touches that almost always add no additional value.

From August 1, 2017, to September 30, 2017, the Saint Paul and Milwaukee Pension Management Centers (PMCs) conducted a service verification pilot program that accepted uncertified copies of service documents to expedite claims adjudication. The PMCs adjudicated the claims with uncertified copies of the service documents and then requested that the Records Management Center (RMC) verify said service. As of June 4, 2019, of the 2,113 total claims completed, the RMC verified as correct the service information that was initially obtained from the uncertified copy of the service document in 2,105

claims (99.6%). Of the eight remaining claims, VA is awaiting a response from the RMC because the records are fire-related or cannot be located. Thus, there is little evidence that the current regulation concerning the nature of evidence that VA will accept as proof of military service and character of discharge actually reduces fraud; rather, it only increases the time to deliver benefits and services to Veterans and beneficiaries.

Therefore, VA proposes to amend 38 CFR 3.203 to authorize VA to accept uncertified copies of service documents—submitted by claimants and/or their representatives—as evidence of military service if VA is satisfied that the documents are free from alteration. This proposed amendment would help streamline and improve the timeliness of adjudication and claims processing for VA benefits by providing VA additional flexibility regarding the nature of evidence that VA will accept as proof of military service and reducing the number of instances where VA must unnecessarily seek verification of military service from other Federal agencies. VA also proposes minor technical changes to § 3.203(a)(1) for clarity.

Finally, we note that VA's proposed revisions to § 3.203 would not alter the underlying standards for determining qualifying service, which would continue to be dependent on the information contained in the service documents. Nothing in this proposed rule would alter VA's essential policy, reflected in § 3.203, of relying on service department determinations of qualifying service, and for any disputes regarding the content of a person's service record to be raised with the appropriate service department. Rather, this proposed rulemaking would only address the circumstances under which a copy of the service document would be acceptable to VA without requiring verification from the service department.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its Regulatory Impact Analysis (RIA) are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. There are no small entities involved with the process and/or benefits associated with this rulemaking.

Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits,
Health care, Pensions, Veterans.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on March 12, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,
*Assistant Director,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.*

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3 – ADJUDICATION

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Revise 38 CFR 3.203(a)(1) to read as follows:

§ 3.203 Service records as evidence of service and character of discharge.

(a) * * *

(1) The evidence is a document issued by the service department. A copy of an original document is acceptable if:

(i) The copy was issued by the service department; or

(ii) The copy was issued by a public custodian of records who certifies that it is a true and exact copy of the document in the custodian's custody; or

(iii) The copy was submitted by an accredited agent, attorney or service organization representative who has successfully completed VA-prescribed training on military records, and who certifies that it is a true and exact copy of either an original document or of a copy issued by the service department or a public custodian of records; or

(iv) The Department of Veterans Affairs is satisfied that an otherwise uncertified copy submitted by the claimant or by the claimant's representative is free from alteration;

and

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(Authority: 38 U.S.C. 501(a))